



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision

Request for Equitable Waiver of Dimensional Requirements

Richard Madison/Tax Map 99, Lot 196

November 13, 2013

Applicant: **Richard Madison**
 74 Mt. Vernon Street
 Arlington, MA 02476

Location: **15 Myrtle Drive (Tax Map 99, Lot 196)**

On May 15, 2013 the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Richard Madison (hereinafter referred to as the "Applicant" and/or "Owner") for an application for an Equitable Waiver of Dimensional Requirements from Article III (B)(3) for the existing dwelling located within the side setback for the property located in the Residential Agricultural Zoning District.

The public hearing was continued to June 5, 2013, with a site walk scheduled for May 18, 2013. The public hearings were continued to August 7, 2013, September 4, 2013, October 16, 2013 and November 6, 2013.

Based on the application, testimony given at the hearing, and supporting documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 15 Myrtle Drive (Tax Map 99, Lot 196).
- 2) The applicant is the owner of record for the lot.
- 3) The applicant was represented by Attorney Douglas P. Hill of Nungesser & Hill.
- 4) The lot is located in the Residential Agricultural (R/A) Zoning District.
- 5) The existing structure is a residential dwelling.
- 6) The parcel is substandard in area and trapezoidal in shape with frontage on the water and on Myrtle Drive, a privately maintained road.
- 7) Numerous residents and abutters spoke against this application during the public hearings.
- 8) The Board of Adjustment continued the Public Hearing to June 5, 2013 and scheduled a Site Walk for May 18, 2013.
- 9) The public hearing on October 16, 2013 was opened to the public for the sole purpose of hearing abutters that may not have been able to be present at a continued hearing if granted by the Board.

10) Timeline of Events and Correspondence:

- Madison Foundation permit applied for 2/15/08 and issued 3/4/08
- Madison Foundation installed and inspected 3/18/08
- May 30, 2008 letter to Cahoon from Frances Eklund primarily about the alleged setback encroachment
- June 5, 2008 reply by Cahoon to May 30, 2008 letter stating surveyed proof must be submitted before any enforcement action could be taken.
- Madison Building permit applied for 6/13/12 and issued 6/29/12
- Madison Building substantially complete (framing, roof, sheathing, etc.). Cahoon inspection (for slab plumbing) on 08/20/2012 noted state of construction.
- Madison Plumbing permit applied for and issued on 8/20/12
- 9/28/12 Cahoon letter to Madison informing him of issues and letting him know the neighbor has a survey by Associated Surveyors that shows the setback is encroached upon
- Don Cahoon obtains copy of Associated Surveyors letter and portion of survey dated 6/15/09 indicating both properties violate side setback.
- 10/30/12 Cahoon letter to Madison saying there is a setback violation and stating what remedy would be.
- 1/16/13 Eklund confirmation letter of conversation with Cahoon re: complaints and additional concerns regarding Madison property.
- 1/29/13 Cahoon letter replying to Eklund with status
- 3/28/13 Cahoon letter to Madison noting additional violation (deck) and requesting response within 5 days of receipt of letter.
- 3/28/13 Gerrior letter noting concerns with his property and concerns with abutting (Madison) property.
- 3/28/13 Eklund letter echoing Gerrior concerns and additional concerns with abutting (Madison) property.
- 4/25/13 Cahoon note regarding discussion with Madison in CEO office.
- 4/29/13 Cahoon note regarding phone discussion with Mr. Levine.
- 5/3/13 email from Woodruff to Eklund regarding update on status of his concerns with Madison property.
- 5/8/13 Fax from Eklund to Planning Board regarding their concerns with the Madison property.
- 5/8/13 Fax from Eklund to Woodruff looking for response from his prior correspondence.
- 5/9/13 email from Woodruff to Eklund regarding his responses to Eklund continuing requests.
- 5/10/13 Gerrior letter regarding requested equitable waiver, and authorization for Nelson Dion to speak on his behalf at meeting.
- 5/15/13 Map received at ZBA meeting.

- 11) The structure was surveyed by David M. Dolan Associates, P. C. on 23 September 2013 and was found to be within the required twenty (20) foot side setback on three corners of the building.
- 12) The existing structure is located approximately 19.3 feet from the north side property line on one corner, and approximately 24.2 feet from the property line on the other corner nearest the side property line. The existing structure is located approximately 16.0 feet from the south side property line on one corner, and 18.6 feet from the property line on the other corner nearest the side property line
- 13) The existing deck shown on the plan was built without proper permits and located within the north and south property lines, and the lake setback. The applicant's attorney stated the deck will be removed until proper permitting can be obtained for a reconfigured conforming deck.

- 14) The Board could not determine if the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after the structure had been substantially completed.
- 15) The Board could not determine if the violation was not an outcome of ignorance of the law or ordinance, obfuscation, misrepresentation, or bad faith on the part of the owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent. However, a majority of the Board felt that there was a failure to inquire.
- 16) The physical or dimensional violation does not constitute a public or private nuisance, nor interfere with or adversely affect any present or permissible future uses of any such property. However, a majority of the Board felt that the structure in violation did diminish the value of other property in the area.
- 17) Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected was not an official finding of the Board, although it was discussed in the context of possibly moving the structure to another foundation location. That option was ignored by the applicant. Only a complete teardown was brought forward by the applicant.
- 18) The public hearing was closed on November 6, 2013. Based on the above Findings of Fact, the Board of Adjustment voted by a vote of three (3) in favor (Bickford, Crowe, Nolin), and two (2) opposed (Stephens, Zewski) to **Deny** the request for an Equitable Waiver of Dimensional Requirements and to direct the Town Planner to draft a Notice of Decision to Deny the Equitable Waiver, to be reviewed by the Board at the November 20, 2013 Regular Meeting.

This decision shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.



Robert Stephens
Chairman, Zoning Board of Adjustment

Date 11/21/2013